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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 150205118-5290-01]

RIN 0648-BE87

Fisheries of the Northeastern United States; Small-Mesh Multispecies Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: The purpose of this action is to set the small-mesh multispecies specifications for the 2015-2017 fishing years, clarify what measures can be modified in a specifications package, and to correct the northern red hake accountability measure trigger rate. This action is necessary to implement the Council's recommended measures intended to reduce the risk of continuing overfishing of northern red hake and set catch and possession limits for the 2015-2017 fishing years. The proposed specifications are designed to help achieve sustainable yield and to inform the public of these measures.

DATES: Public comments must be received by [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2012-0170, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov*/#!*docketDetail;D=NOAA-NMFS-2012-0170*, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930-2276. Mark the outside of the envelope: “Comments on Whiting Specifications.”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

New England Fishery Management Council staff prepared an environmental assessment (EA) for the small-mesh multispecies specifications that describes the proposed action and other considered alternatives. The EA provides a thorough analysis of the biological, economic, and social impacts of the proposed measures and other considered alternatives. An Initial Regulatory Flexibility Analysis (IRFA) was also prepared for this action. The IRFA is contained in the EA prepared for this action, but also is summarized in the Classification section of this proposed

rule. Copies of the specifications EA are available on request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. This document is also available from the following internet addresses:

www.greateratlantic.fisheries.noaa.gov/ or www.nefmc.org.

FOR FURTHER INFORMATION CONTACT: Jason Berthiaume, Fishery Management Specialist, (978) 281-9177.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council manages the small-mesh multispecies fishery primarily through a series of exemptions from the Northeast Multispecies Fishery Management Plan (FMP). The small-mesh multispecies fishery is composed of five stocks of three species of hakes (northern and southern silver hake, northern and southern red hake, and offshore hake). It is managed separately from the other stocks of groundfish such as cod, haddock, and flounders, primarily because the fishing is prosecuted with much smaller mesh and does not generally result in the catch of these other stocks. Amendment 19 to the Northeast Multispecies FMP (April 4, 2013; 78 FR 20260) established a process and framework for setting the small-mesh multispecies catch specifications, as well as set the specifications for the 2012-2014 fishing years.

The purpose of this action is to set the specifications for the 2015-2017 fishing years, based on the New England Fishery Management Council's recommendation. In 2012 and 2013, northern red hake catch rates exceeded the annual catch limits (ACL) and the acceptable biological catch (ABC). As a result, northern red hake was determined to be experiencing

overfishing. To reduce the risk of continued overfishing of northern red hake and constrain catch within the proposed ACL, this action proposes to adopt the Council's recommended measures to adjust the northern red hake possession limits per trip and trigger points at which possession limits are reduced in-season.

This proposed rule also includes a correction to the small-mesh accountability measures and clarifies what measures can be modified in a small-mesh multispecies specifications action.

Proposed Measures

1. 2015-2017 Small-Mesh Multispecies Specifications

The Council's Scientific and Statistical Committee (SSC) met on August 26, 2014, to discuss the specifications and to recommend ABCs for the 2015-2017 small-mesh fishery. The FMP's implementing regulations require the involvement of an SSC in the specification process. Following the SSC, the Whiting Oversight Committee met on September 9 and October 30, 2014, to discuss and recommend small-mesh specifications. The Council approved the final specifications on November 17, 2014.

This action proposes new specifications for the 2015-2017 fishing years, derived from a stock assessment update for northern and southern red and silver hakes. The recent stock assessment was updated with survey data through spring 2014 for red hake, and through fall 2013 for silver hake. Reported landings and estimated discards were updated through calendar year 2013. Limits on fishing year catches for northern and southern stocks of red and silver hakes are based on the recommendations from the SSC and Committee to the Council which, in turn, recommended measures to NMFS for review and implementation. Changes to the total allowable landings (TAL) are needed to respond to changes in the discard rate of red and silver

hakes. These specifications would remain effective for fishing years 2015-2017 unless otherwise changed during that time.

Table 1. Summary of the small-mesh multispecies specifications for 2015-2017

Stock	Overfishing Limit (OFL) (mt)	ABC (mt)	ACL (mt)	Percent change from 2012-2014	Discard Rate (percent)	TAL	Percent change from 2012-2014
N. Silver Hake	43,608	24,383	23,161	85	11.2	19,948.7	122.3
N. Red Hake	331	287	273	2.6	60.6	104.2	15.4
S. Whiting*	60,148	31,180	29,621	-8.2	17.1	23,833.4	-12.6
S. Red Hake	3,400	3,179	3,021	-2.4	55.3	1,309.4	-2.0

*Southern whiting includes southern silver hake and offshore hake

2. Northern Red Hake Possession Limit Reduction

This action proposes to reduce the northern red hake possession limit from 5,000 lb (2,268 kg) to 3,000 lb (1,361 kg). This reduction in possession limit is intended to delay the in-season accountability measure (AM) until later in the year and to reduce the potential for northern red hake catches to exceed the ACL (as occurred in fishing years 2012 and 2013). Lowering the possession limit is expected to discourage the targeting of red hake and to encourage fishing in areas, seasons, or ways that avoid catching excess red hake. Compared to starting the fishing year with a 5,000 lb (2,268 kg) possession limit, it is expected that the in-season AM would be delayed, possibly increasing revenue for trips taken later in the year to target silver hake, and reducing discarding. This measure is intended to be combined with the proposed northern red hake possession limit reduction trigger to effectively constrain catch of northern red hake to the ACL and to slow catch rates to extend the fishing season.

3. Additional Northern Red Hake Possession Limit Reduction Trigger

This measure would implement an additional possession limit reduction trigger for northern red hake of 1,500 lb (680 kg) when 45 percent of the TAL is reached. When the in-season possession limit reduction triggers were initially implemented, the trigger was set at 90 percent of the TAL. When landings reach the 90-percent trigger, the red hake possession limit would be reduced to the incidental level of 400 lb (181 kg). In both 2012 and 2013, the 90-percent trigger was reached and the ACL was still exceeded. As a result, in 2014, the 90-percent trigger was reduced to 45 percent in accordance with the AM regulations. However, this rule's proposed regulatory correction would increase the 45-percent trigger to 62.5 percent. Because this trigger did not function as well as intended to ensure that the ACL is not exceeded, this rule proposes a second, earlier possession limit reduction trigger of 1,500 lb (680 kg) when 45 percent of the TAL is reached. For clarity, as a result of these proposed specifications, there would be two in-season possession limit triggers for northern red hake: At 45 percent of the TAL, the per-trip possession limit would be decreased from 3,000 lb (1,361 kg) to 1,500 lb (680 kg); and then when 62.5 percent of the TAL is reached, the per-trip possession limit would be decreased from 1,500 lb (680 kg) to 400 lb (181 kg).

As previously discussed, this additional possession limit trigger is intended to slow catch of northern red hake and to reduce the potential for northern red hake catch from exceeding the ACL.

4. Clarification on Modifications in a Specifications Action

When developing the rulemaking for this action, we determined that the current regulations governing the specifications process as recommended in Amendment 19 do not fully reflect the Council's intent regarding the scope of measures that can be implemented pursuant to

the specifications process. Amendment 19 specified that the Council shall specify on at least a 3-year basis the OFL, ABC, ACLs, and TALs for each small-mesh multispecies stock as well as the corresponding possession limits, including in-season possession limit triggers to be consistent with the revised specification recommendations and estimates of scientific and management uncertainty from the SSC. However, the implementing regulations for Amendment 19 inadvertently failed to specify that adjustments to possession limits and the in-season possession limit triggers were among the items that could be modified in a specifications action. This rule proposes to correct this problem by including possession limits and in-season possession limit triggers in small-mesh multispecies specifications regulations. The Magnuson-Stevens Act at section 305(d) grants the agency the authority to promulgate regulations necessary to carry out any FMP or amendment to an FMP.

5. Regulatory Correction

When the specifications were being developed, the Whiting Plan Development Team identified an error in the previous set of specifications (i.e., fishing years 2012-2014). This error resulted in a 39-mt underestimate of the ABC for northern red hake and a 552-mt underestimate for southern red hake ABC. Due to the 39-mt underestimate, fishing year 2012 catches were actually only 27.5 percent over the ACL rather than 45 percent as previously announced. As a result, the northern red hake post-season accountability measure that was triggered for fishing year 2014 used the incorrect catch and landings limits. Using Magnuson-Stevens Act section 305(d) authority, this action would correct the AM based on the corrected information. No correction is required for the southern red hake error, because only a small fraction of the southern red hake ABC was caught and an increase in the ABC would have no effect.

Currently, the northern red hake accountability measure trigger is 45 percent, which would reduce the possession limit to 400 lb (181 kg) when 45 percent of the TAL is landed. This correction would increase the 400-lb (181-kg) possession limit trigger point from 45 percent of the TAL to 62.5 percent. This correction would result in a 1,500-lb (680-kg) possession limit when 45 percent of the TAL is landed and a subsequent possession limit reduction to 400 lb (181 kg) when 62.5 percent of the TAL is landed.

Future AMs for fishing years in which the catch exceeds the ACL would be deducted from the corrected 62.5-percent trigger, pursuant to the small-mesh AM regulations at § 648.90.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the Northeast Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

The Office of Management and Budget has determined that this action is not significant for the purpose of E.O. 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA), which describes the economic impact this proposed rule, if adopted, would have on small entities.

Description of the Reasons Why Action by the Agency is Being Considered

A description of the action and why it is being considered are contained at the beginning of this preamble and in the SUMMARY.

Statement of the Objectives of, and Legal Basis for, this Proposed Rule

The statement of the objective and the legal basis for this action are contained at the beginning of this preamble and in the **SUMMARY**.

Description and Estimate of the Number of Small Entities to Which this Proposed Rule Would Apply

On June 12, 2014, the Small Business Administration (SBA) issued an interim final rule revising the small business size standards for several industries effective July 14, 2014 (79 FR 33467). The rule increased the size standard from \$19.0 million to \$20.5 million for finfish fishing, from \$5.0 to \$5.5 million for shellfish fishing, and from \$7.0 million to \$7.5 million for other marine fishing, for-hire businesses, and marinas. The small-mesh multispecies fishery falls under the finfish category and, thus, has a threshold of \$20.5 million for determining small versus large entities. However, having different size standards for different types of commercial fishing activities creates difficulties in categorizing business that participate in multiple fishing related activities, which is typically the case in the fishing industry.

In order to fish for small-mesh multispecies, a vessel owner must be issued either a limited access Northeast multispecies permit or an open access Northeast Multispecies Category K Permit; however, there are many vessels issued both of these types of permits that may not actually fish for small-mesh multispecies. Based on ownership data for 2011-2013, there were 1,087 distinct ownership entities based on calendar year 2013 permits that could potentially target small mesh multispecies. Of these, 1,069 are categorized as small and 18 are categorized as large entities per the SBA guidelines. While 1,087 commercial entities are directly regulated by the proposed action, not all of these entities land small-mesh multispecies and would, therefore, not be directly impacted by this action. To estimate the number of commercial entities

that may experience impacts from the proposed action, active small-mesh multispecies entities are defined as those entities containing permits that are directly regulated and that landed any silver hake or red hake in 2013 for commercial sale. There are 298 potentially impacted, directly regulated commercial entities, 295 (99 percent) of which are classified as small entities.

According to SBA's new size standards, a business involved in harvesting finfish is classified as small business if it is independently owned and operated, not dominant in its field of operation, with receipts not exceeding \$20.5 million for all its affiliated operations worldwide. To identify an independent business, ownership information was used. The ownership data identifies individuals who own multiple vessels or a single vessel with multiple owners. This methodology assigns all the vessels owned by an individual into the same entity and including the co-owners in the same pool of affiliation following SBA's criteria for affiliation based on the principle of control that "may arise through ownership, management, or other relationships or interactions between the parties" even when the control is not exercised. Section 8.9 in the specifications EA describes the vessels, key ports, and revenue information for the small-mesh multispecies fishery, and is not repeated here.

Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of this Proposed Rule

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

Federal Rules Which May Duplicate, Overlap, or Conflict with this Proposed Rule

NMFS is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

The Council conducted a comprehensive evaluation of the potential socioeconomic impacts of the specifications in the EA (see **ADDRESSES**), and a discussion of this evaluation follows.

Overall, the expected impact from the proposed changes to the ACL specifications is neutral to low positive, relative to the no-action alternative. The proposed specifications in this action would revise the ACL specifications for northern and southern stocks of silver and red hake for fishing years 2015-2017 based on updated stock assessments. The proposed specifications would increase the northern red and silver hake TALs, but reduce the TALs of the southern red and silver stocks. Landings of southern red hake and both stocks of silver hake were well below the 2013 TALs and the proposed 2015-2017 TALs. Therefore, the proposed limits would not be restrictive for the fishery and as a result, compared to taking no action, impact on revenues would be neutral. In 2013, landings of northern red hake exceeded the TAL and also exceed the proposed 2015-2017 TAL. Thus, if the fishery stays under the TAL to prevent overfishing as is expected, the impacts on revenue from northern red hake landings would be negative, but insignificant when compared with status quo. Compared to the no action alternative, the status quo northern red hake TAL is 15 percent lower than the proposed TAL. Because the proposed specifications generally increase quotas, compared to taking no action the

proposed specifications would be positive, but insignificant. However, over the long term, the proposed limits are intended to reduce the risk of overfishing to maintain a healthy, sustainable stock which would in turn maximize revenues. Thus, compared to taking no action, the proposed specifications would have positive long term impacts on revenues.

This action also proposes to reduce the possession limit for northern red hake from 5,000 lb (2,268 kg) to 3,000 lb (1,361 kg). The preferred alternative may reduce catch and landings (on trips targeting red hake) early in the season. However, the alternative may also potentially delay the time when the AM is triggered, allowing more red hake catch to be landed later in the season. It is expected, based on input from industry advisors, that the in-season AM trigger would be delayed with a lower initial possession limit, increasing revenue for trips taken later in the fishing year and reducing discards. Compared to taking no action, reducing the northern red hake possession limit is intended to prevent early closures, thus extending the season and fishing opportunity. This alternative is intended to support better market conditions by allowing small-mesh vessels to operate at a more consistent level for a longer period of time. As such, although this measure reduces a possession limit, the reduction is intended to prolong the fishing season and provide for better and more consistent market conditions, thus increasing overall revenues. As such, the preferred alternative's impact on profitability is expected to be neutral to low positive relative to the no-action alternative. Actual impact will depend on how fishermen who target this species in the northern area adapt their targeted fishing activity (and discarding activity) to the proposed lower initial possession limit and in-season accountability measures.

This action also proposes to implement an additional in-season possession limit reduction trigger for red hake. This proposed measure would reduce the possession limit to 1,500 lb (680

kg) when landings reach 45 percent of the TAL. This measure, in conjunction with the measure to reduce the initial northern red hake possession limit to 3,000 lb (1,361 kg) are designed to slow catches of northern red hake. Although this would implement an additional possession limit reduction trigger, further reducing possession limits, the reduction is intended to extend the overall season and delay the reduction to incidental levels. Compared to taking no action, implementing an additional northern red hake possession limit trigger at 45 percent is intended to prevent early closures, thus extending the season. Without this additional trigger, possession limits could likely be reduced to the incidental limit trigger earlier in the year. Similar to the reduction in northern red hake possession limit, this alternative is expected to have neutral to slightly positive impacts compared to taking no action.

In regard to correcting the accountability measure trigger for northern red hake, when the specifications were being developed the Whiting Plan Development Team identified an error in the previous set of specifications (i.e., fishing years 2012-2014). As a result, the northern red hake post-season accountability measure was triggered for fishing year 2014 using the incorrect catch and landings limits. This action would correct the AM trigger rate from 45 to 62.5 percent based on the corrected information. This should be beneficial for the industry and is not expected to have any negative economic impacts. Not doing this correction would result in the trigger rate remaining at 45 percent. This would result in the possession limit being reduced to the incidental level of 400 lb (181 kg) earlier in the season at 45 percent of the TAL compared to 62.5 percent. Reducing the possession limit to the incidental level earlier in the season would not only reduce landings, but would also be damaging to market conditions as it would likely result in a shorter season, and less consistent catch rates. Therefore, this measure is expected to

delay reducing possession limits, increase landings, and provide for better market conditions.

Compared to taking no action, the proposed correction would have positive impacts.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 2, 2015.

Eileen Sobeck,

Assistant Administrator for Fisheries,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.86, revise paragraphs (d)(1)(i) introductory text, (d)(1)(ii) introductory text, (d)(1)(iii) introductory text, and (d)(4) introductory text, and add paragraph (d)(5) to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(d) * * *

(1) * * *

(i) *Vessels possessing on board or using nets of mesh size smaller than 2.5 in (6.35 cm).* Owners or operators of a vessel may possess and land not more than 3,000 lb (1,361 kg) of red hake, and not more than 3,500 lb (1,588 kg) of combined silver hake and offshore hake, if either of the following conditions apply:

* * * * *

(ii) *Vessels possessing on board or using nets of mesh size equal to or greater than 2.5 in (6.35 cm) but less than 3 in (7.62 cm).* An owner or operator of a vessel that is not subject to the possession limit specified in paragraph (d)(1)(i) of this section may possess and land not more than 3,000 lb (1,361 kg) of red hake, and not more than 7,500 lb (3,402 kg) of combined silver hake and offshore hake if either of the following conditions apply:

* * * * *

(iii) *Vessels possessing on board or using nets of mesh size equal to or greater than 3 in (7.62 cm).* An owner or operator of a vessel that is not subject to the possession limits specified in paragraphs (d)(1)(i) and (ii) of this section may possess and land not more than 3,000 lb (1,361 kg) of red hake, and not more than 30,000 lb (13,608 kg) of combined silver hake and offshore hake when fishing in the Gulf of Maine or Georges Bank Exemption Areas, as described in § 648.80(a), and not more than 40,000 lb (18,144 kg) of combined silver hake and

offshore hake when fishing in the Southern New England or Mid-Atlantic Exemption Areas, as described in § 648.80(b)(10) and (c)(5), respectively, if both of the following conditions apply:

* * * * *

(4) *Accountability measure in-season adjustment of small-mesh multispecies possession limits.* If the Regional Administrator projects that an in-season adjustment TAL trigger level for any small-mesh multispecies stock, as specified in § 648.90(b)(5)(iii), has been reached or exceeded, the Regional Administrator shall reduce the possession limit of that stock to the incidental level for that stock, as specified in this paragraph (d)(4), for the remainder of the fishing year through notice consistent with the Administrative Procedure Act, unless such a reduction in the possession limit would be expected to prevent the TAL from being reached.

* * * * *

(5) *In-season adjustment of northern red hake possession limits.* In addition to the accountability measure in-season adjustment of small-mesh multispecies possession limits specified in § 648.86(d)(4), if the Regional Administrator projects that 45 percent of the northern red hake TAL has been reached or is exceeded, the Regional Administrator shall reduce the possession limit for northern red hake to 1,500 lb (680 kg) for the remainder of the fishing year unless further reduced to the incidental possession limit according to the accountability measure in-season adjustment of small-mesh multispecies possession limits specified in § 648.86(d)(4).

* * * * *

3. In § 648.90, revise paragraphs (b)(4)(i) and (b)(5)(iii) to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

* * * * *

(b) * * *

(4) * * *

(i) The Whiting PDT shall prepare a specification package, including a SAFE Report, at least every 3 years. Based on the specification package, the Whiting PDT shall develop and present to the Council recommended specifications as defined in paragraph (a) of this section for up to 3 fishing years. The specifications package shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the small-mesh multispecies fishery. The specifications package shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP. The specifications package may include modifications to the OFL, ABC, ACL, TAL, possession limits, and in-season possession limit triggers.

* * * * *

(5) * * *

(iii) *Small-mesh multispecies in-season adjustment triggers.* The small-mesh multispecies in-season accountability measure adjustment triggers are as follow:

Species	In-season Adjustment Trigger
Northern Red Hake	62.5 percent
Northern Silver Hake	90 percent
Southern Red Hake	90 percent
Southern Whiting	90 percent

* * * * *

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